STATE OF MICHIGAN

COURT OF APPEALS

SCOTT SHARP,

Plaintiff-Appellant,

v

ART VAN FURNITURE, INC.,

Defendant-Appellee.

UNPUBLISHED
August 8, 2006

No. 267810
Bay Circuit Court
LC No. 04-003061-NO

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Plaintiff Scott Sharp appeals as of right from the trial court order granting defendant Art Van Furniture, Inc.'s (Art Van) motion for summary disposition pursuant to MCR 2.116(C)(10), on the grounds that a wet condition of the floor of an Art Van retail store was open and obvious and that no special aspects existed. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Shortly after noon on January 7, 2003, Sharp approached an Art Van Furniture Store. He had patronized this store on approximately one hundred other occasions. It was a wintry day, and the ground outside was covered with slush. As he approached and entered the store, Sharp was not looking for water that would have been tracked into the store that morning by others. Because he was not looking down, he did not see any water until after he slipped and fell just inside the second of two sets of automatic double doors. Standing up, he noticed his hand was wet, and he could see a wet mark in the floor made by his foot as it slid. The store manager testified that on inspection after Sharp's fall there was a minimal amount of water on the floor caused by melted snow, roughly the equivalent of a few eyedroppers full, such as would be left by the treads of shoes. Sharp's fiancée, now his wife, walked beside him carrying her three-year-old son, and had no trouble with traction as she entered the store.

Art Van moved for summary disposition, arguing that the wet condition of the floor was open and obvious, that it did not pose an unreasonable danger, and that Art Van did not have notice of the condition. Sharp argued that accumulated water on the floor of an entryway posed an unreasonably dangerous condition that Art Van should have noticed as other customers entered the store tracking water and slush on their feet. He asserted that the condition was not

open and obvious to him as an entering customer but was obvious to the store employees who should have witnessed the problem as it accumulated. The trial court granted Art Van's motion for summary disposition on the grounds that (1) water on the floor was open and obvious, and (2) there were no special aspects of the situation to impose a duty on Art Van. Sharp now appeals.

II. Invitor's Responsibilities

A. Standard Of Review

We review de novo a trial court's decision on a motion for summary disposition by reviewing the record to determine whether the movant was entitled to judgment as a matter of law.[1] Our review is limited to the evidence presented to the trial court at the time the motion was decided.[2] Summary disposition of all or part of a claim may be granted when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."[3] We must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party.[4]

B. Open And Obvious

It is undisputed that Sharp was an invitee on Art Van's premises.[5] Generally, an invitor owes a duty to his invitees to exercise reasonable care to protect them from an unreasonable risk of harm caused by a dangerous condition on the land, including inspecting the premises and making any necessary repairs or warning of discovered hazards.[6] The invitor's duty does not extend to conditions from which an unreasonable risk cannot be anticipated, or to dangers so obvious that an invitee can be expected to discover them himself.[7] An invitor must warn of hidden defects but is not required to protect against or warn of open and obvious dangers, unless he should anticipate the harm despite the invitee's knowledge of it.[8] "Whether a danger is open

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[1] *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003); *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998).

[2] *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003).

[3] MCR 2.116(C)(10).

[4] *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

[5] *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000); *Burnett v Bruner*, 247 Mich App 365, 368-369; 636 NW2d 773 (2001).

[6] *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001); *Stitt*, *supra* at 597; *Benton v Dart Properties, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006).

[7] *Ghaffari v Turner Constr Co*, 473 Mich 16, 21; 699 NW2d 687 (2005); *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 500; 418 NW2d 381 (1988).

[8] *Ghaffari*, *supra* at 21-22; *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997).

and obvious depends on whether it is reasonable to expect that an average user with ordinary intelligence would have discovered the danger on casual inspection."[9]

Water in a store entryway on a slushy January day in Michigan is a hazard analogous to that presented by ice and snow. Generally, absent special circumstances or a statutory duty, the hazards presented by ice and snow are open and obvious, and do not impose a duty on the property owner to warn of or remove the hazard.[10] Reasonable minds could not disagree that a slippery surface in a store entryway should be expected under these conditions. Even assuming there was a large amount of water on the floor, an average person of ordinary intelligence would be on notice of the possibility of water accumulation, or possibly the presence of water on his own shoes that could pose a risk of slipping. Sharp presented no evidence that would cause reasonable minds to differ that this condition was open and obvious.

C. Special Aspects

Regardless of a duty to warn, an invitor still has a duty to protect against foreseeably dangerous conditions.[11] In determining whether a danger presents an unreasonable risk of harm despite being open and obvious, a court must consider whether special aspects exist, such as a condition that is unavoidable or that poses an unreasonably high risk of severe injury.[12] The possessor of land must take reasonable measures within a reasonable time after an accumulation of ice and snow to diminish the hazard of injury to an invitee only if there is some special aspect that makes the accumulation unreasonably dangerous.[13]

In this case, the minimal amount of water in the entryway of the furniture store was not unavoidable and did not pose an unreasonable risk of severe injury. The types of injuries sustained in a slip and fall are not generally classified as unreasonably dangerous. There was no risk of death or serious bodily harm under these conditions. The condition of the entryway to the store also did not render the wet floor effectively unavoidable. An average person of ordinary intelligence observing the open and obvious condition would have been able to enter and exit the store by side-stepping or carefully traversing the area in which Sharp slipped and fell. There is no evidence in the record that large amounts of water existed in the entryway. Indeed, Sharp's fiancée entered the store without encountering the water, indicating that the water could be avoided. Furthermore, wet store entryways during the winter are a common everyday occurrence in Michigan, and "everyday occurrences" are not generally dangerous conditions that pose an unreasonable risk of harm.[14] Therefore, reasonable minds could not differ that the small

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[9] *Teufel v Watkins*, 267 Mich App 425, 427; 705 NW2d 164 (2005).

[10] *Benton*, *supra* at 443 n 2; *Corey v Davenport College of Business* (*On Remand*), 251 Mich App 1, 4-5, 8; 649 NW2d 392 (2002).

[11] *Bertrand v Alan Ford, Inc*, 449 Mich 606, 611; 537 NW2d 185 (1995).

[12] *Lugo*, *supra* at 516-517.

[13] *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 332; 683 NW2d 573 (2004).

[14] *Lugo*, *supra* at 522-523.

amount of water in the entryway did not pose an unreasonable risk of harm, or that an average person could avoid an area with a small amount of water accumulation.

Since reasonable minds could not differ regarding the open and obvious nature of the floor's wet condition, the lack of an unreasonable risk of severe injury, or the avoidability of the area in question, the trial court properly granted Art Van's motion for summary disposition, deciding the question as a matter of law.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder